

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **VICE CHAIRMAN FRED THOMAS**, on March 25, 1999
at 3:27 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 57; 3/4/99
Executive Action: HJR 16; HB 57

HEARING ON HB 57

Sponsor: Rep. John Mercer, HD 74, Flathead Lake

Proponents: **Rod Sundsted, Associate Commissioner of Fiscal Affairs, Montana University System**
 George Dennison, President, University of Montana
 Craig Roloff, Assistant to Vice President, Montana State University
 Ben Darrow, University of Montana Side Students
 Jake Ankeny, Montana State University, Northern Students
 Colin Stephens, Montana State University, Billings
 Sue Weingartner, Alliance of American Insurers
 Larry Jones, Liberty Northwest Insurance
 Candace Payne, University Teacher's Union
 George Wood, Montana Self-Insurer's Association

Opponents: **Nancy Butler, State Fund**
 Webb Brown, Montana Chamber of Commerce

Opening Statement by Sponsor:

Rep. John Mercer, HD 74, Flathead Lake, brought HB 57 on behalf of the Board of Regents of Higher Education. This bill simply releases the University System from being a captive customer of State Workers' Compensation. The reason he is interested in this bill is that he has worked very hard on two topics. One is trying to help the State Fund to operate as a business, and the other he has worked with the Montana University System in the same manner.

This bill tries to eliminate the most blatant piece of hypocrisy which exists in our state code right now. State Fund, which would like to run as a business, wants a state law which requires the University System to be a captive customer. He knows no business which allows captive customers. Who can ask the University System to operate as a business, when by law it is required they purchase Workers' Compensation through the State Fund and not allowed to buy it freely on the open market.

The University System is a separate and independent branch of government, Constitutionally created and therefore, should not be captive. Local governments are not captive, neither are schools or community colleges. They were freed from the system and the universities should be also.

The only reason to hold the University System as a captive customer is because of the money made from them. This money is made at the expense of students. Does it make sense to use students to subsidize Workers' Compensation in Montana? When the State Fund paid \$20M to the General Fund, was that money made from student paid subsidy? The universities should not be

treated any differently from local governments, schools, and community colleges and other businesses in Montana and should have a right to purchase this insurance in the free-market system. The bill does not prohibit them from buying from the State Fund. If the State Fund has the most competitive product, then obviously, that's where the University System will go.

There will be people who will suggest putting this off for a couple years, which is the same argument year after year. He requests the Committee not put a delayed effective date on this.

{Tape : 1; Side : A; Approx. Time Counter : 5 - 41}

Proponents' Testimony:

Rod Sundsted, Associate Commissioner of Fiscal Affairs, Montana University System, informed the Committee this bill was brought before the last Legislative Session as SB 98. That bill was passed out of this Committee but did not get through the Senate Floor. They have been taking a look the past four to six years at ways to increase the efficiency of the University System. Page 2 of the Fiscal Note documents since 1993 there could have been significant saving if they had options other than the State Fund. He is not sure the University System will go out to bid or change carriers, but they are asking for the opportunity to test the market to see if the State Fund is competitive. If there are savings, they would like to change. Approximately 25% of their total funding comes from the State and the remaining 3/4ths comes from students through tuition and fees charged to users on campus. He asked for support of this bill.

George Dennison, President, University of Montana, handed out **EXHIBIT (las67a01)** and explained over the past 20 years the University System has been transformed into a more independent business operation. In 1979, 80% of the total University funding came from the State. It is closer to 20% to 25% today. That is the kind of change which has occurred over those years. At the same time, a portion of the State budget committed to higher education in 1979 was at 21% and today it is at 11%. They would like to be accountable as well. They look very closely at any way they can find cost effectiveness and efficiency. The private sector is interested in this business. He believes they can test the market and do very well.

Craig Roloff, Assistant to Vice President, Montana State University, stated they have been positioning itself to make the best possible opportunity for Workers' Compensation coverage since 1987. That's when they created a safety management office. They hired a person to work with employees to reduce accidents in

the workplace. They have been pursuing this opportunity since 1995. An independent external review of their administrative services was focused on the Governor's challenge to run the University System more like a business. This is an opportunity for them. The University System has been working with the State Fund for the past two years and they have equipped them with safety records. They have completed this in a cautious, conservative manner and he does not want anyone to view this bill as a license for them to make radical changes which would jeopardize them. They would, however, like the opportunity to pursue outside resources in the event they are most beneficial for the university.

Ben Darrow, Representing Students, Montana Tech in Butte, University of Montana in Missoula, and Western Montana College in Dillon, supported HB 57. He believes this will clearly help in cost-savings to students. He spoke about the rising costs to students and referred to **EXHIBIT 1** which **George Dennison** handed out.

Jake Ankeny, Representing Students, Montana State University in Bozeman, and Montana State University Northern, strongly supported this legislation because of savings to the students and to taxpayers, who are the two primary supporters of the University System. They also support it because it could improve quality overall and is an effort to control costs.

Colin Stephens, Representing Students, Montana State University in Billings, mentioned they whole-heartedly support this bill.

Sue Weingartner, Alliance of American Insurers, which is a national trade association with more than 250 property and casualty insurers. In 1997, Alliance member companies wrote 40.3% of the Workers' Compensation Insurance written by private insurers in Montana. The Alliance supports HB 57 for the following reasons:

- 1) Workers' Compensation premiums are currently very low and competition is fierce. The University System will benefit from this opportunity as carriers are increasing services to insureds, both in the area of loss-control and administration of claims in order to retain customers.
- 2) This bill does not require the University System to seek Workers' Compensation coverage outside the State Fund. It merely gives them the option. The University System will be free to seek bids from the private marketplace as well as from the State Fund and will, no

doubt, base their decision on both cost and services provided.

- 3) This proposal will level the playing field for the University System. The University will be afforded flexibility to review what the marketplace has to offer and determine which proposal would best meet the needs of the University System. This will allow the University the same flexibility that private businesses have from purchasing Workers' Compensation Insurance.

The Alliance supports the concept of competition and believes the University System should have the same opportunity to receive the benefits of a competitive market as does the private sector. This will result in savings to students and taxpayers in Montana.

Larry Jones, Liberty Northwest Insurance, informed the Committee they are the largest, private Workers' Compensation carrier in the State of Montana. They have six offices in six cities in Montana. If this bill passes and the University System makes a request for proposal, they are prepared to bid on it.

Candace Payne, University Teacher's Union, supported HB 57.

George Wood, Montana Self-Insurer's Association, said they arise in support of this legislation.

Opponents' Testimony:

Nancy Butler, State Fund, opposed HB 57 as proposed. See **EXHIBIT** (las67a02).

Webb Brown, Montana Chamber of Commerce, remarked State Fund is not a private business, although we do try to encourage them to act as a business. Private and self-insurers are not required to cover everyone and they are required through the State Fund to allow coverage for everyone. The remainder of the business within State Fund would then be required to carry the burden, the fees, as well as the shift that they would see with a smaller State Fund also. The State Fund has made great strides and he hopes that will not be jeopardized at this point in time by allowing the University System to leave. They also appreciate the University System wanting to act like a private enterprise even though they are not. He said he believes savings that would be available to students, if any, would not be great. He wouldn't want to be a student counting on a tuition decrease if this were to pass. Based on that, he asked the Committee to oppose this bill.

Questions from Committee Members and Responses:

SEN. COCCHIARELLA asked **Nancy Butler** how much tax money the State Fund has received since 1987.

Ms. Butler referred the question to **Mark Barry, State Fund**, who said it is \$43M.

SEN. COCCHIARELLA asked **REP. MERCER** if he knew the number of employees in the University System.

REP. MERCER responded slightly over 6,000.

SEN. ELLIS asked **George Wood** if the self-insurers audit and run the program themselves, or do they hire insurance companies like the State does with health insurance to handle the administration of that program.

Mr. Wood responded the Plan I self-insurers use both systems. Most use third party administrators and some use in-house methods. Part is taken care of in the approval process, that is the self-insurer has to be approved by the State.

SEN. ELLIS asked if the Montana Association of Counties is part of that program.

Mr. Wood answered they are a self-insurer and most of their counties belong to the association. They use a third-party administrator.

SEN. ELLIS asked if they were as large as the University System.

Mr. Wood responded based on premium dollars, the counties are substantially larger.

SEN. BARTLETT asked **Rod Sundsted** if he anticipated if the system as a whole would move in one direction or another if this bill passed.

Mr. Sundsted said he believed they are at different places as far as risk management and that may include phasing in some campuses, but he thinks they will all move in the same direction over a period of time.

SEN. BARTLETT asked if they would be more likely to go self-insured or to go with an independent insurance carrier.

Mr. Sundsted said they would see what the private market would provide. They are not ready to take on self-insurance at this point in time.

SEN. BARTLETT mentioned she heard the University System may be looking at combining self-insurance and their Workers' Compensation coverage with their health care coverage.

Mr. Sundsted responded it is not something they are considering at the moment, but they might consider it down the road.

SEN. KEATING asked **Kevin Braun, Department of Labor & Industry**, if there is criteria for self-insureds.

Mr. Braun answered there is specified criteria in statute which is primarily financial ability and solvency for self-insurance.

SEN. KEATING asked if the University System appears solvent.

Mr. Braun responded he has no way of knowing without looking at their books.

SEN. KEATING inquired if a self-insured is required to have a financial reserve.

Mr. Braun stated currently, in statute, there is a minimum requirement of \$250,000 or their last three years loss.

SEN. KEATING said he realized the University System is not contemplating self-insurance at this point. He asked **Rod Sundsted** if they were, what would be their source of reserve to be self-insured? Would they rely strictly on appropriations from State funds?

Mr. Sundsted responded he does not believe they would. He referred to **Mr. Roloff's** plan of a retrospective premium plan where they actually keep their premiums and then they reimburse the State Fund for claims paid. If you do that over a period of time, you can build your own reserves to the point of being able to self-insure. There are number of ways to do this. He said they would not come to the Legislature asking for reserve funds.

SEN. KEATING asked if they would use the State Fund in this revolving premium business.

Mr. Sundsted responded Montana State University began a retrospective premium plan with the State Fund. They do not have a choice but to go through the State Fund. They assume some of

the risk above their claims and they also maintain any additional premium beyond the administrative expenses.

SEN. KEATING asked **Nancy Butler** now that the Old Fund Liability is gone and the State Fund is paying dividends and operating more like an insurance organization. If State Fund didn't have the customers which are referred to in statute, would they negotiate the premiums with the University System?

Ms. Butler said yes, they have different programs now for different underwriting pricing programs and offer scheduled credits, also credits for early return-to-work programs. They offer a menu of programs.

SEN. KEATING inquired if she thought since she has reviewed some of the competition in the private sector, if the State Fund could compete with them in bidding for the business of a large customer like University Systems.

Ms. Butler responded yes they do.

SEN. COCCHIARELLA mentioned when she worked for the State Fund in 1993 - 1995, they spent a lot of time trying to begin some programs for the University System.

She mentioned to **Web Brown** that she is perplexed because he came in as an opponent to this bill. Employers and employees have paid \$443M in taxes since 1987 to support the State Fund. She stated the **Montana Chamber of Commerce** speaks for privatization of businesses, against taxes on employers and less government. She asked how he can come against this bill which does all the things his organization opposes.

Mr. Brown answered this is not private business, it is government agencies. The State Fund was in such a deep hole to begin with was the reason taxes were generated to get them out. He would like to see them compete on a basis with the private and self-insurers, but it is not on an even basis. If they want to get rid of the Workers' Compensation system and go to an assigned risk pool or some other source, he would be for that. But at this point, the State Fund still has to cover some of the Chamber of Commerce's members who cannot get coverage anywhere else. Allowing the University System out of the State Fund would potentially burden them.

SEN. COCCHIARELLA asked if he supported subsidization of the Chamber members by the students in the State of Montana for the protection of a government agency.

Mr. Brown responded he doesn't know that is has been demonstrated the students will save any money and does not think that is what he is supporting. The students may actually be under a burden if this bill passes and the University System is allowed to hunt for what is on the market. There are other businesses which are held captive to State Fund because of their size in small business and also because of their risk background.

SEN. COCCHIARELLA asked **Rod Sundsted** about the comment that the University System is only benefitted by premiums paid to the State Fund for claims adjusting because the University System has their own early return to work and safety programs. What other things does the University System do that makes it 'gravy' to the State Fund system?

Mr. Sundsted responded he wasn't sure he made that statement, but they do have an early return-to-work with their own safety program.

SEN. BARTLETT asked **Craig Roloff** if he could give this Committee or the Legislature any guarantee if the University System were allowed to do this with the passage of this bill, and there was a savings to cover the increased percentage for MSU to cover the teacher's retirement for the optional retirement program, or to something else which has no direct benefit to the students.

Mr. Roloff contended, as **Mr. Sundsted** mentioned about 25% of their payroll is paid with State General Fund. One-third is tuition and one-third is other funds like auxiliaries and federal grants. They did receive a dividend from State Fund for past program savings. That dividend will be returned in the same percentage basis as their payroll for prior years. **{Tape : 1; Side : B; Approx. Time Counter : 41 - 74}** That dividend will be revenue to reduce student rate increases. The savings does not cover a different kind of costs which is associated with a different revenue, but a portion of any savings which would go back to their instructional program. It is difficult to pinpoint exactly where the money went in the instructional program.

SEN. BARTLETT asked **Mr. Roloff** if there is anything which requires the University to do that, or is it simply policy that the existing personnel have set in place?

Mr. Roloff responded in the case of a dividend there is a statutory requirement to ensure the dividend is returned at the same percentage basis as what the payroll is as source of revenue. For the future, the way they have viewed their program and their management process is to return savings to the areas which are showing the greatest safety record. If they had

\$50,000 savings next year in their program, they would want to return savings to the programs which had the best safety records.

SEN. BARTLETT asked in reference to the statute which requires the dividends to be returned for distribution, would that apply to these premiums if this bill were to pass?

Mr. Roloff responded no, there would not be a statutory requirement although certainly, in their relationship with the federal government they had savings and part of that savings was attributable to ransom contract payroll. They would have to return that.

REP. MERCER closed by saying he would like the record to reflect this is the last bill he will present as a legislator and that the State Chamber of Commerce was here against free enterprise. He read minutes from last session which stated the head of State Fund was asked if they would oppose this bill two years from now. The response was that in two years they should be in good enough shape to do it. They always want to wait two years. Also, they wanted a strong State Fund, yet they were able to pay \$20M back to the General Fund. Does it make sense if you were concerned how financially strong you were, you might want to keep that \$20M? They paid out the Old Fund Liability tax earlier and they are paying out dividends. Yet, they want to tax students to remain financially strong.

In addition to the argument made by the State Chamber of Commerce representative about being concerned the State Fund getting smaller, both the State Chamber and the State Fund's arguments prove too much. The arguments lead to more captive customers. If we need captive customers to remain financially strong, let's bring local governments, schools and community colleges back in.

REP. MERCER believes that is wrong, and our philosophy is the free enterprise system is what creates financially strong institutions. Why would you want someone to be a captive customer? Only if you were making money off them. If they were losing money, they would ditch the University System. They are using student money to subsidize other business which is wrong since they promised two years from now they would agree to this bill. That is wrong. The University System represents only 2% of their business and it is crazy to think this will have a major impact.

EXECUTIVE ACTION ON HJR 16

Motion: **SEN. BARTLETT** moved that **HJR 16 BE CONCURRED IN.**

Discussion:

CHAIRMAN THOMAS explained amendments **EXHIBIT(las67a03)** and **EXHIBIT(las67a04)**.

SEN. BARTLETT asked the difference between the third amendment on the short list and the fifth amendment on the long list.

CHAIRMAN THOMAS explained the difference is the short list amendment on line 13 would adequately protect the rights of workers as they decide whether or not to form and join unions. He is recommending the language to read, "adequately protect the rights of workers to decide whether or not to form and join unions". He said **Melissa Case, Hotel & Restaurant Unions**, preferred the shorter language in three and he preferred the longer language in five was better.

SEN. BARTLETT stated it seems to her the shorter language says the same thing.

CHAIRMAN THOMAS said either way is okay with him.

SEN. MCNUTT thought there are situations where employees are faced with the decision whether to or not to join unions. The other has the connotation to him as simply "whether to".

SEN. BARTLETT asserted her point simply is the simple use of the word 'whether' automatically carries with it, because that is the nature of that word.

Motion/Vote: **SEN. WILSON** moved that the **AMENDMENTS 1,2, AND 3 BE ADOPTED** in **EXHIBIT 4**. Motion carried 8-1 with **SEN. KEENAN** voting no.

SEN. THOMAS suggested the Committee consider amendment number 2 in **EXHIBIT 3**. On the long list of amendments, number 1 has already been adopted. Numbers 3 and 4 no longer apply and other language was chosen in place of number 5.

Motion: **SEN. KEATING** moved that **AMENDMENT NUMBER 2, EXHIBIT 3 BE ADOPTED**.

Motion: **SEN. COCCHIARELLA** moved to segregate the 'whereas' clauses in that amendment. She did not believe the third 'whereas' does not fit under this resolution.

Vote: Motion that the 1ST 'WHEREAS' BE ADOPTED carried unanimously.

SEN. COCCHIARELLA asked for further explanation of the 2nd 'whereas'.

CHAIRMAN THOMAS described this 'whereas' as a general term and necessary for regulation.

SEN. COCCHIARELLA stated the reason she is concerned about it is that she is serving on the Business and Industry Committee and they have made great strides in trying to lessen the regulation on business. She believes this term reinforces imposing more regulation.

SEN. KEATING asserted the central theme of the 'whereas' is that Montana has the lowest per capita income. Wages are not high enough. Our businesses are being regulated in a lot of ways such as air quality, water quality, waste and toxic disposal, hazardous waste, also the Occupational Safety & Health Act (OSHA) and the Environmental Protection Agency. All of this adds to the cost of doing business, including payroll have to be adjusted so they can stay in business. It costs businesses to make a product and if they cannot sell it for a sufficient amount, there is no sense of being in business. The State does put a lot of regulation on businesses.

SEN. MCNUTT explained in the past two years OSHA in his small Montana business has created a lot more safety programs. The Department of Revenue is now coming up with a new form to report their inventory because they are scared to death something is being run out that they didn't collect tax on. Where we are cutting out regulation in one area, we are coming back in other areas. They even have to record an odometer reading every time they cross the State line. These regulations are not decreasing.

SEN. BARTLETT asked which of those regulations might be federal.

SEN. MCNUTT answered they are all monitored by the State even though they are not all State regulations.

SEN. BARTLETT did not believe any of the 'whereas' clauses really belong because they are outside the title, and the focus of the resolution is to protect the right of workers to organize unions.

SEN. COCCHIARELLA said these words paint a picture which says we are doing nothing about this.

SEN. KEENAN believed the Legislature is taking one step forward and two steps back as far as regulations.

Vote: Motion that 2ND 'WHEREAS' BE ADOPTED carried 6-3.

Vote: Motion that 3RD 'WHEREAS' BE ADOPTED carried 5-4.

Vote: Motion that HJR 16 BE CONCURRED IN AS AMENDED carried 5-4 by roll call vote.

EXHIBIT (las67a05) was received by E-Mail after the Committee hearing.

{Tape : 1; Side : B; Approx. Time Counter : 74 - 95}

EXECUTIVE ACTION ON HB 57

Motion: SEN. KEENAN moved that HB 57 BE CONCURRED IN.

Motion: SEN. ELLIS moved that AMENDMENTS BE ADOPTED **EXHIBIT (las67a06)**.

Discussion:

SEN. ELLIS commented these amendments impart what State Fund asked regarding effective date.

Eddye McClure explained what each amendment does to the bill.

Motion: SEN. KEATING moved TO SEGREGATE AMENDMENTS NUMBER 1 AND 3.

SEN. KEATING explained if this bill dies, the State Fund does not have the opportunity to contract for services for non-Fund customers.

SEN. COCCHIARELLA stated it is important to understand this amendment. If you read the title of the bill on page 6 it states it is an act authorizing the University System to elect Workers' Compensation Plans 1, 2 or 3. It does not eliminate the State Fund. This amendment allows contracting for safety services, return-to-work and claims. She explained a prior bill, similar to this one was killed and believes segregating amendments is the wrong thing to do.

Vote: Motion AMENDMENTS NUMBER 1 AND 3 BE SEGREGATED failed 2-7 with SEN. KEATING and SEN. THOMAS voting no.

Vote: Motion AMENDMENTS NUMBER 2 AND 4 BE SEGREGATED failed 5-4 by roll call vote.

Vote: Motion that **HB 57 BE CONCURRED IN AS AMENDED carried 6-3**
by roll call vote.

ADJOURNMENT

Adjournment: 5:02 P.M.

SEN. TOM KEATING, Chairman

GILDA CLANCY, Secretary

TK/GC

EXHIBIT (las67aad)